

Application No. 10/047,545
Amendment dated May 12, 2005
Reply to Office Action of February 10, 2005

REMARKS

Applicant cancelled claims 99-122, 124-151, and 153 without prejudice or disclaimer of their subject matter, amended claim 154, and added new claims 169-194 to further define Applicant's invention.

In the Office Action, the Examiner rejected claims 154-168 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,669,909 to Zdeblick et al. ("Zdeblick"). Independent claim 154, as now amended, recites a spinal fusion implant having a leading end for insertion first into the disc space, at least one truncated side, and a thread, "said at least one truncated side having a truncated portion between said thread and said leading end."

Zdeblick teaches a fusion device 10 having a body 11 with truncated sidewalls that "extend from the anterior end 12 of the device up to the complete threads 19 at the posterior end 13." (Zdeblick col. 6, lines 18-20; Fig. 2). Zdeblick does not teach or suggest a truncated portion between threads 19 and the leading end of the device. (See Zdeblick, Figs. 2 and 8). Accordingly, Applicant submits that the rejection of claims 154-168 under 35 U.S.C. § 102(e) as being anticipated by Zdeblick has been overcome.

The Examiner provisionally rejected claims 154-168 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 49-67 of co-pending Application No. 08/480,908 (the "'908 application"). The final scope of the claims in the '908 application has not been determined. After the final scope of the claims of the '908 application is determined, Applicant will assess the need for a Terminal Disclaimer in view of those claims and will submit a Terminal Disclaimer in the present application if necessary.

New independent claim 169 recites a spinal fusion implant having a body having a substantially cylindrical configuration, at least one truncated side, and a thread for engaging said implant to the adjacent vertebral bodies of the spine, "the locus of said thread forming a substantially cylindrical configuration." Zdeblick does not teach or suggest an implant as recited in independent claim 169. Accordingly, Applicant submits

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that independent claim 169 is patentable over Zdeblick and that dependent claims 170-197 dependent from independent claim 169, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim

Applicant submits that independent claims 154 and 169 are patentable and that dependent claims 155-166, 168, and 170-194 dependent from one of independent claims 154 and 169, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.

In view of the foregoing remarks, it is respectfully submitted that the claims, as amended, are patentable. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the preceding comments.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-1066.

Respectfully submitted,

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